IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.6195 OF 2005

Shri J.B. Khanolkar ...Applicant
Vs.
Shri K.J.A. Padmanabh & Anr. ...Respondents

Mr. Chandrakant S. Sao for the Applicant.
Mr. K.V. Saste, A.P.P. for the State.

CORAM : A. S. OKA, J.
DATE : OCTOBER 21, 2005.

P.C.:

1. Heard the learned Advocate appearing for the Applicant. Perused the written submissions. The Applicant is an accused in private complaint filed by the Respondent No.1 under section 138 of the Negotiable Instruments Act. The learned Magistrate convicted the Applicant. The learned Magistrate directed that the Applicant will pay compensation of Rs. 01,60,000/- and directed that in default, the Applicant will suffer simple imprisonment for nine months. In an Appeal preferred by the Applicant , the learned Judge suspended the substantive sentence and the sentence in default of the fine.

2. The learned Judge, however, directed the applicant to deposit compensation amount of Rs.01,60,000/- on or before 30th June, 2005 and ordered the Applicant to be released on bail on

executing the P.R. Bond of Rs.25,000/- with one surety.

3. The learned Counsel for the Applicant submitted that the Respondent No.2 filed a complaint against the accused persons by name J.B. Khanwilkar and infact, without establishing identity , the Applicant whose name is Shri J.B. Khanolkar has been convicted. He submitted that even in a statement under section 313 of the Code of Criminal Procedure, 1973, the name of the Applicant is mentioned as J.B.Khanwilkar. The learned Counsel candidly accepted that the contention that the Applicant is not J.B. Khanwilkar but is J.B. Khanolkar was not taken up during the pendency of complaint and till the conclusion of the trial.

4. If such factual contention was not raised, no fault can be found with the learned Judge if he directed the Applicant to deposit the compensation amount. The Apex Court in a judgment reported in 2001(2) Supreme Court Cases, Page 416 (Stanny Felix Pinto Vs. Jangid Builders Pvt. Ltd. & Anr.) observed that while suspending the sentence of offence under section 138 of the Negotiable Instruments Act, it is advisable that the Court imposes a condition

that the fine amount is remitted within a certain period and if the amount is heavy, the court can direct atleast a portion thereof to be remitted as the convicted person wants the sentence to be suspended during the pendency of the appeal. In the light of the law laid down by the Apex Court, no fault can be found in the impugned order. However, considering the facts and circumstances of the case, time granted to deposit the sum of Rs.01,60,000/- is extended.

5. Hence, I pass the following order:

: O R D E R :

i) The Application is rejected.

ii) The impugned order dated 06th June, 2005 is modified and time granted to the Applicant to deposit Rs.01,60,000/- is extended till 31st December, 2005. No further extension will be granted.

iii) If the Applicant executes P.R. Bond as directed by the order dated 06th June, 2005 with one surety of like amount, he will be enlarged on bail till 31st December, 2005. If the Applicant fails to deposit a sum of Rs.01,60,000/- till 31st December,

2005, the Applicant will have to surrender.

JUDGE